

PUBLIC MEETING MINUTES

June 9, 2011

PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
Sacramento, CA 95811

Chair Martinez called the meeting to order at 10:05 a.m.

Members Present

Anita I. Martinez, Chair
Alice Dowdin Calvillo, Member
Sally M. McKeag, Member
A. Eugene Huguenin

Staff Present

Suzanne Murphy, General Counsel
Les Chisholm, Division Chief, Office of General Counsel
Christine Bologna, Acting Chief Administrative Law Judge
Eileen Potter, Chief Administrative Officer

Call to Order

Anita I. Martinez stated that as a long term staff member of the Public Employment Relations Board (PERB), it was her honor to be recently appointed as a new Member and Chair of PERB. Chair Martinez also welcomed PERB's new Board Member, A. Eugene Huguenin and General Counsel, Suzanne Murphy to their first meeting of the PERB. Chair Martinez invited the public to visit the Governor's web site or the PERB web site to view the bios of the new Board Members and General Counsel.

After establishing that a quorum had been reached, Chair Martinez called the PERB to order for a return to the open session of the February 10, 2011 Board meeting and April 14, 2011 informational meeting of the Board. She reported that the Board met in continuous closed session to deliberate on pending cases on the Board's docket, pending requests for injunctive relief, and pending litigation, as appropriate.

Chair Martinez read into the record the decisions that issued since the open session in April. Those were PERB Decision Nos. 2178-S, 2179-I, 2180-E, 2181-M, 2182-M, 2183 and 2184-M. In request for Injunctive Relief No. 599 (*United Teachers of Los Angeles v.*

Los Angeles Unified School District), the request was denied. A document containing a listing of the aforementioned decisions was made available at the meeting.

Motion: Motion by Member McKeag and seconded by Member Dowdin Calvillo, to close the February 10, 2011 Board meeting and April 14, 2011 informational meeting.

Ayes: Martinez, McKeag, Dowdin Calvillo and Huguenin.

Motion Adopted – 4 to 0.

Without objection, Chair Martinez adjourned the February 10, 2011 Board meeting and April 14, 2011 informational meeting. She then opened and called to order the June 9, 2011 public meeting. Member Dowdin Calvillo led in the Pledge of Allegiance to the Flag.

Minutes

Motion: Motion by Member Dowdin Calvillo and seconded by Member McKeag, that the Board adopt the minutes for the February 10, 2011 Public Meeting and April 14, 2011 informational meeting.

Ayes: Martinez, McKeag, Dowdin Calvillo and Huguenin.

Motion Adopted – 4 to 0.

Comments From Public Participants

None.

Staff Reports

The following staff reports were received with the caveat that any matter requiring action by the Board and not included as an item in today's agenda would be scheduled for consideration at a subsequent meeting.

a. Administrative Report

Chief Administrative Officer Eileen Potter reported that there was no news to report on the Governor's budget that would affect PERB. She reported PERB continued work on the lease negotiation extensions for both the Headquarter and the Oakland Offices. There were no foreseen problems with either of the extensions and the negotiation completion date for both is anticipated within 9 to 10 months. Ms. Potter also reported that she is working on closing PERB's year end fiscal year reports (ending June 30, 2011).

b. Legal Reports

Suzanne Murphy, General Counsel, reported that the monthly activity and litigation reports had been distributed to the Board for its review. From those reports Ms. Murphy recapped, since the Board's last public meeting in April, the following information. With respect to

unfair practice charges during the months of April and May, Ms. Murphy reported that 163 new cases were filed with the General Counsel's office; 198 case investigations were completed; and a total of 70 informal settlement conferences were conducted by staff. As Chair Martinez mentioned earlier, during the same two-month period, one request for injunctive relief was filed. It was denied by the Board, but the General Counsel's Office simultaneously issued complaints on the underlying charges, and an informal conference was held on an expedited basis. A second day of informal conference was scheduled for June 13, 2011.

In terms of litigation, since the last Board meeting in April, no new litigation matters have been filed against PERB. However, in the case, *Melanie Williams and Demosthenes Halcoussis v. PERB; California Faculty Association* (PERB Decision Nos. 2116-H, 2117-H [Case Nos. LA-CO-501-H, LA-CO-502-H]), Ms. Williams filed a notice of appeal from a decision by which the Los Angeles County Superior Court affirmed the Board's decisions in those two dismissal cases. As to case determinations during that same period of time, Ms. Murphy reported that PERB received the following two final court rulings: (1) In the case *PERB v. SEIU Local 521* (Case No. H035006), it was reported at the last public meeting that the Sixth District Court of Appeal ruled in favor of PERB and affirmed in full an order of the Santa Clara Superior Court (Case No. 09-CV-153088) that had granted a preliminary injunction. On May 31, the Superior Court granted PERB's request for dismissal and the case is now complete; and (2) In the case *CCPOA v. PERB; State of CA (California Department of Corrections and Rehabilitation)* (Case No. C067235), at the request of the Petitioner, the Third District Court of Appeal dismissed a petition for writ of mandate by which CCPOA had sought review of PERB Decision No. 2154-S (Case No. SA-CE-1595-S), regarding the inclusion of retired annuitants in State Bargaining Unit 6. The case is now complete.

Acting Chief Administrative Law Judge Christine Bologna reported on the activities of the Division of Administrative Law and stated that the administrative law judge (ALJ) report had been distributed to the Board for its review. As an update to the report, Ms. Bologna stated the cumulative total of cases assigned to Judge Robin Wesley was not appearing on the CMS reports and that will be corrected shortly. Ms. Bologna reported that in April and May, 39 cases were assigned for formal hearing. There are presently 101 cases assigned to 5 PERB ALJs and 1 Board agent and 108 hearings assigned year to date. She further reported that 27 cases are pending written proposed decision. In April and May, the ALJs held 20 days of hearing and 8 formal hearings were completed. Year to date, there were 131 days of formal hearing and 43 hearings were completed. In April and May, 6 cases were withdrawn and 6 proposed decisions were issued. She further reported that year to date closures are 101, as compared to fiscal year 2009-2010's total of 111. In terms of proposed decisions, 34 have issued year to date.

Ms. Bologna also thanked the Board and Administrative Staff for the two state gifts received acknowledging her 25 years of State service.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, reported that the Legislative Report was circulated to the Board for its review. Mr. Chisholm reported on the following pending legislation that would directly affect or may impact PERB and/or its jurisdiction.

Assembly Bill (AB) 195 (Hernández, Roger) would amend Section 3506 of the Meyers-Milias-Brown Act to specifically define unfair practices by an employer covered by that Act. This bill has passed the Assembly and is pending the Senate Public Employment & Retirement Committee.

Assembly Bill 501 (Campos) would amend EERA both with respect to the definitions of “exclusive representative” and the definition of “public school employer” in EERA section 3540.1. This bill has passed the Assembly and is pending assignment to a policy committee in the Senate.

Assembly Bill 646 (Atkins) would amend the MMBA with regard to impasse procedures. In its current form it would not change anything with respect to mediation under that statute where it is voluntary unless required by local rules. It would provide that an employee organization could, following mediation, request that a dispute be submitted to factfinding. In that event, PERB would be responsible for the appointment of the factfinding panel chairperson but would not be responsible for the costs (whether they use our appointee or select their own). This bill has passed the Assembly and is pending assignment to a policy committee in the Senate.

Assembly Bill 1244 (Chesbro) provides representation rights for self-determination program support workers. The bill would provide for the right of labor organizations to petition PERB either for recognition based on majority showing through card check or by submitting 30 percent to have an election. It generally provides that the Board’s jurisdiction shall include all matters related to the representation of self-determination support workers. This bill has passed the Assembly and is pending assignment to a policy committee in the Senate.

Senate Bill 259 (Hancock) which would have changed the definition of employee under the HEERA to clarify that all student workers are covered did not pass out of the Senate Appropriations Committee. There is no further action this year on this bill.

Senate Bill 609 (Negrete McLeod) would amend each of the Acts under PERB’s jurisdiction to provide that, if a decision by an administrative law judge regarding the recognition or certification of an employee organization is appealed, the decision shall be deemed the final order of the Board if the Board does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed. The Assembly PERS Committee considered the bill and passed it out and referred to Assembly Appropriations next.

Senate Bill 857 (Lieu) would amend the Civil Code to prohibit the recovery of any damages due to an unlawful strike as determined by PERB. This bill has passed the Senate and is pending policy committee assignment in the Assembly.

Mr. Chisholm will continue to monitor the aforementioned legislation and keep the Board apprised of future developments.

Member Dowdin Calvillo asked what the deadline date was by which the bills needed to be submitted to the Governor's Desk. Mr. Chisholm responded by the end of the session and will confirm the exact date to the Board after the meeting today.

Motion: Motion by Member Huguenin and seconded by Member McKeag that the Administrative, Legal (including General Counsel and Chief Administrative Law Judge), and Legislative Reports be accepted and filed.

Ayes: Martinez, McKeag, Dowdin Calvillo and Huguenin.

Motion Adopted – 4 to 0.

Old Business

None.

New Business

None.

General Discussion

Chair Martinez announced that there being no further business, it would be appropriate to recess the meeting to continuous closed session and that the Board would meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through August 11, 2011 when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. Code, sec. 11126(c)(3)), personnel (Gov. Code, sec. 11126(a)), pending litigation (Gov. Code, sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code, sec. 11126(e)(2)(c)).

Motion: Motion by Member Dowdin Calvillo and seconded by Member Huguenin to recess the meeting to continuous closed session.

Ayes: Martinez, McKeag, Dowdin Calvillo and Huguenin.

Motion Adopted – 4 to 0.

Respectfully submitted,

Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Anita I. Martinez, Chair